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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 TEOFIL BRANK,

16 Defendant.

Case No. CR 15-00131-JFW

**DEFENDANT TEOFIL BRANK'S
MOTION TO COMPEL
DISCOVERY**

Proposed Hearing Date: May 8, 2015

Proposed Hearing Time: 10:00 a.m.

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19 TO: UNITED STATES ATTORNEY STEPHANIE YONEKURA AND
20 ASSISTANT UNITED STATES ATTORNEYS KIMBERLY JAIMEZ AND
21 VANESSA BAEHR-JONES:

22 PLEASE TAKE NOTICE that on May 8, 2015, at 10:00 a.m., or as soon
23 thereafter as counsel may be heard, in the courtroom of the Honorable John F. Walter,
24 United States District Judge, Defendant Teofil Brank will bring for hearing the
25 following Motion:

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MOTION

Defendant Teofil Brank, through his attorneys of record, Deputy Federal Public Defenders Seema Ahmad and Ashfaq G. Chowdhury, hereby moves this Honorable Court for an order compelling the government to produce any and all discovery pertaining to the government's investigation of D.B. for paying for sex acts and for engaging in sex acts with minors.

This Motion is based on the attached Memorandum of Points and Authorities, all files and records in this case, and any further evidence and argument as may be adduced at the hearing on this motion.

Respectfully submitted,

HILARY POTASHNER
Acting Federal Public Defender

DATED: May 6, 2015

By /s/ Seema Ahmad
SEEMA AHMAD
ASHFAQ G. CHOWDHURY
Deputy Federal Public Defenders
Attorneys for Teofil Brank

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Mr. Brank is charged in a one-count indictment with a violation of 18 U.S.C. § 875(d), transmitting an interstate communication containing a threat to injure the reputation of alleged victim, D.B. At a status conference before this Court on May 4, 2015, the government represented that the Grand Jury has returned a superseding indictment charging Mr. Brank with six additional counts. Mr. Brank has not been arraigned on those charges and the superseding indictment has not been docketed in this case.

At trial, the government intends to introduce evidence that alleged extortion victim D.B. initiated a pay-for-sex relationship with Mr. Brank, a former actor in the gay pornography industry. D.B. will also be called as a witness in this case -- either by the government or the defense -- to testify about his relationship with Mr. Brank, the context of payments made by him to Mr. Brank, and his general reputation for paying for sex with gay pornography actors.

The defense, under Federal Rule of Criminal Procedure 16 and the Due Process Clause, seeks other evidence in the custody of the government pertaining to an ongoing criminal investigation of D.B. for paying for sex and for possibly engaging in sex acts with minors.¹

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¹ In a teleconference with AUSA Kimberly Jaimez on May 5, 2015, defense counsel was informed that the government will produce all material related to the investigation of D.B. to this Court *in camera* for a determination as to what material, if any, must be produced to the defense. This motion is submitted in support of the position that all material pertaining to the criminal investigation of D.B. is *Brady* material and must be produced.

1 **II.**

2 **FACTUAL AND PROCEDURAL BACKGROUND TO DISCOVERY DISPUTE**

3 At the first status conference in this case held on March 27, 2015, AUSA
4 Kimberly Jaimez characterized the relationship between D.B. and Mr. Brank as a pay-
5 for-sex arrangement. She also stated that in the past, D.B. has provided Mr. Brank with
6 a “referral list”, meaning a list of additional individuals that D.B. was seeking out for
7 sexual acts in exchange for payment to Mr. Brank. This Court inquired as to whether
8 any of the individuals who acted as prostitutes for D.B. were underage. AUSA Jaimez
9 stated that at the time, the government was unaware of any sex acts D.B. had engaged
10 in with minors but would be further investigating him.

11 To date, the government has produced an FBI report of an interview with D.B.
12 conducted on March 3, 2015. The report indicates that on an unknown date (within
13 2012 or 2013), D.B. was introduced to Teofil Brank. He was introduced by another
14 gay pornography actor named Miles who D.B. had met through an online escort
15 service. The FBI report goes on to note that D.B. paid for sex with Mr. Brank on
16 several occasions and would also pay him to procure other sexual partners for D.B. In
17 an email to Mr. Brank from D.B. dated September 27, 2014, D.B. offered Mr. Brank
18 \$22,000 in referral fees if he could arrange sexual liaisons between D.B. and any of the
19 eleven gay pornography actors listed in the email.

20 Despite the government’s representation at the March 27, 2015 status conference
21 that D.B. was being investigated for pay-for-sex arrangements and for potential sex acts
22 with minors, the defense has received no discovery related to the investigation of D.B.
23 At a status conference before this Court on May 4, 2015, AUSA Jaimez stated that the
24 investigation of D.B. has been ongoing and noted that the government did not believe
25 that all discovery related to the investigation was relevant to the defense in this case
26 and therefore did not have to be produced. She also stated she would submit all
27 discovery related to the investigation of D.B. to the Court *in camera* by May 6, 2015
28 for the Court to determine what material, if any, must be produced to the defense.

1 Defense counsel stated the position that all evidence related to D.B.'s involvement in
 2 pay-for-sex arrangements and any material related to the investigation of D.B.'s sexual
 3 liaisons (whether with minors or not) is *Brady* material and must be produced.

4 III.

5 ARGUMENT

6 Federal Rule of Criminal Procedure 16 requires that the Government provide the
 7 defense with all material in the government's possession, custody, or control if the item
 8 is material to preparing a defense. Fed. R. Crim. P. 16(a)(1)(E)(i). The Ninth Circuit
 9 has clearly articulated the government's duty in this regard:

10 A defendant need not spell out his theory of the case in order to
 11 obtain discovery. Nor is the government entitled to know in advance
 12 specifically what the defense is going to be. The relevant subsection of
 13 Rule 16 is written in categorical terms: Upon defendant's request, the
 14 government must disclose any documents or other objects within its
 15 possession, custody or control that are "material to preparing the
 16 defense." Unlike the preceding and subsequent subsections, which both
 17 require that "the government knows—or through due diligence could
 18 know—that the" item exists, subsection (E) is unconditional. Lack of
 19 knowledge or even a showing of due diligence won't excuse
 20 non-compliance.

21 It thus behooves the government to interpret the disclosure
 22 requirement broadly and turn over whatever evidence it has pertaining to
 23 the case.

24 *United States v. Hernandez-Meza*, 720 F.3d 760, 768 (9th Cir. 2013) (internal citations
 25 omitted). Materiality, moreover, "is a low threshold." *Id.* Items must be turned over
 26 so long as the information would help prepare a defense, which includes causing a
 27 defendant to completely abandon a planned defense." *Id.*

28 The government is obligated under the Due Process Clause to turn over evidence
 favorable to a defendant, whether the evidence is exculpatory or impeaching. *See*
Brady v. Maryland, 373 U.S. 83, 87 (1959); *Giglio v. United States*, 405 U.S. 150, 154-
 55 (1972); *United States v. Sedaghaty*, 728 F.3d 885 (9th Cir. 2013); *United States v.*
Henthorn, 931 F.2d 29 (9th Cir. 1991). The government's obligations under the due
 process clause extend beyond documents in their possession. The government "has a
 duty to learn of any exculpatory evidence known to others acting on the government's

1 behalf.” *United States v. Price*, 566 F.3d 900, 909 (9th Cir. 2009) (quotations omitted).
 2 Because the prosecution is uniquely positioned to obtain information known to other
 3 agents of the government, “it may not be excused from disclosing what it does not
 4 know but could have learned.” *Id.* (quotations omitted).

5 The government need not be certain as to the exculpatory value of evidence
 6 before it has an obligation to disclose it to the defense. *Amado v. Gonzalez*, 758 F.3d
 7 1119, 1136 (9th Cir. 2014) (“The prosecutor must presume in favor of disclosure, and
 8 resolve his doubts about the exculpatory nature of a document in favor of producing
 9 it.”); *see also United States v. Sudikoff*, 36 F. Supp. 2d 1196, 1199 (C.D. Cal. 1999).
 10 The prosecutor’s duty to disclose under *Brady* is undoubtedly “broad.” *Amado*, 758
 11 F.3d at 1136.

12 Additional justification for production of the requested materials is set forth in
 13 the declaration of counsel in support of this motion, filed *in camera* because it sets forth
 14 details of Mr. Brank’s theory of defense. There is no dispute that the requested items
 15 are in the government’s possession.

16 IV.

17 CONCLUSION

18 For these reasons, Mr. Brank respectfully requests that this Court grant his
 19 motion and compel the government to produce all discovery pertaining to its
 20 investigation of D.B. for pay-for-sex arrangements and for potential sex acts with
 21 minors.

22 Respectfully submitted,

23 HILARY POTASHNER
 24 Acting Federal Public Defender

25 DATED: May 6, 2015

26 By /s/ Seema Ahmad

27 ASHFAQ G. CHOWDHURY

28 SEEMA AHMAD

Deputy Federal Public Defenders

Attorneys for Defendant, TEOFIL BRANK